In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1054

GEORGE N. CHRISTOFALOS, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. C) is not yet reported. The opinion of the Regional Commissioner of the Immigration and Naturalization Service (Pet. 3a-7a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 15, 1966. The petition for a writ of

certiorari was filed on February 11, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the denial by the Regional Commissioner of the Immigration and Naturalization Service of petitioner's application to reapply for admission to the United States after deportation was an abuse of discretion.

STATEMENT

On December 19, 1960, petitioner, a native of Greece and citizen of Canada, was ordered deported to Canada on the ground that, following his admission to this country as a non-immigrant visitor, he overstayed the authorized period of his visit (Tr. 16; Pet. 4a).[1] This order followed two previous similar violations by petitioner, one of which had resulted in his being granted voluntary departure to Canada in March 1960 (Pet. 3a-4a). Prior to his December 1960 deportation, petitioner had been fined $10 by an Illinois court on a charge of assaulting a sixteen-year-old girl, and, on another occasion, had been sentenced to six months imprisonment in Illinois for tampering with an automobile (Tr. 34-36; Pet. 6a).[2]

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[1] "Tr." refers to the transcript of petitioner's 1965-1966 deportation hearing.

[2] In May 1961 petitioner was sentenced to six months probation and required to pay $300 restitution in Toronto on a

In August 1961 petitioner re-entered the United States from Canada as a non-immigrant visitor, remaining here until March 1964 (Tr. 25, 27). In a December 1963 sworn statement to the Immigration and Naturalization Service, petitioner admitted having entered the United States three times since his 1960 deportation without having obtained the permission of the Attorney General, although he knew that such permission was required (Tr. 90). In 1962 he married a United States citizen who had one child by a previous marriage. Later in 1962 another child was born to petitioner's wife (Tr. 63-64; Pet. 4a).

After returning to Canada in March 1964, petitioner, on September 10, 1965, again entered the United States as a non-immigrant visitor. In a subsequent sworn statement he admitted having told the immigration inspector that he wanted to visit in Chicago for three weeks, although his real intention was to remain in this country with his family and to try to buy a business (Tr. 97; Pet. 5a). In February 1966, after a hearing, petitioner was found deportable but was granted permission to depart voluntarily at his own expense if he did so by March 11, 1966 (Tr. 5, 67). On March 10, 1966, an application for an extension of time within which to depart voluntarily was denied by the District Director of the Immigration and Naturalization Service (Tr. 1).

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charge of obtaining money by false pretenses. See Pet. 6a, where petitioner's complete, known record of arrests and convictions in this country and Canada is set forth.

Petitioner then filed in the court of appeals a petition for review of the deportation order. On March 18, he applied to the District Director for permission to reapply for admission to the United States following his deportation. The application was denied (Supp. Tr. 1). On July 15, 1966, the Regional Commissioner of the Service affirmed the refusal of leave to reapply for admission, pointing out (Pet. 7a) that while

> the fact that [petitioner] has a United States citizen wife and child is an appealing factor * * * [he] has displayed contempt and complete disregard for the immigration laws of the United States. Further, his frequent violations and suspected violations of the laws of two countries during the past six years can only lead to the belief that this pattern of conduct can be expected to continue.

On July 28, 1966, petitioner moved in the court of appeals to be allowed to file an amended petition for review encompassing the Regional Commissioner's denial of permission to reapply for admission. On October 14, the court of appeals denied the motion, holding the matter to be within the discretion of the Attorney General (Pet. 9a). Petitioner moved for reconsideration and clarification of the court's order. On November 15, the court reaffirmed its decision sustaining the Regional Commissioner's action and further ordered that the petition for review of the deportation order be dismissed (Pet. 8a).

ARGUMENT

There is no basis for further review of the Regional Commissioner's determination not to permit petitioner to reapply for admission to this country after deportation. The statute provides that such permission shall be at the discretion of the Attorney General. 8 U.S.C. 1182(a)(17). In view of petitioner's many knowingly unlawful entries into the United States and significant criminal record, it is plain that there was no abuse of that discretion in this case. *Cubillos-Gonzalez* v. *Immigration and Naturalization Service, Los Angeles, California*, 352 F. 2d 782 (C.A. 9); see *Matter of J-F-D*, 10 I. & N. Dec. 694. *Matter of C-G*, 8 I. & N. Dec. 476; compare *Hintopoulos* v. *Shaugnessy*, 353 U.S. 72, 77.[3]

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[3] *Immigration and Naturalization Service* v. *Errico* and *Scott* v. *Immigration and Naturalization Service*, 385 U.S. 214, cited by petitioner, are not to the contrary. Those cases involved the construction of the term "alien otherwise admissible" in 8 U.S.C. 1251(f) and are not relevant here. *Matter of H-R*, 5 I. & N. Dec. 769, though also cited by petitioner, was a decision *denying*, as here, an applicant with a United States citizen wife permission to reapply for admission to this country following deportation. In *Matter of S-N*, 6 I. & N. Dec. 73, where the opposite result was reached, there was an inadvertent failure by the applicant to disclose his prior deportation when admitted, in contrast to the deliberate action in the present case.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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